

## KERN COUNTY AIR POLLUTION CONTROL DISTRICT

### **RULE 210.8 - FEDERAL TRANSPORTATION CONFORMITY**

*(Adopted April 6, 1995, Amended 1/8/98, 3/4/99)*

Provisions of this Regulation shall apply to federal transportation projects, which are funded or approved under Title 23 U.S.C and regionally significant, non-federal projects. For the purpose of this Regulation, the 'State' agency primarily responsible for the applicable implementation plan as used in Part 93, Subchapter A, Chapter I, Title 40, of the CFR shall mean the Kern County Air Pollution Control District (KCAPCD).

Provisions of Code of Federal Regulations (CFR), Title 40, Chapter I, Subchapter C, Parts 51 and 93 in effect January 8, 1998, are hereby adopted by reference, except in the Sections which appear below. Sections or sub-sections that differ from federal criteria and procedures are presented in their entirety in this rule.

#### PART 93--[AMENDED]

Authority: 42 U.S.C. 7401 - 7671q

Subpart A--Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws.

Sec.

- 93.100 Purpose.
- 93.101 Definitions.
- 93.102 Applicability.
- 93-103 Priority.
- 93.104 Frequency of conformity determinations.

#### 93.105 Consultation.

##### 93.105.1 General

This rule provides procedures for interagency consultation (local, state, and federal). These procedures apply to the Mojave Desert Air Basin portion of Kern County of California and apply to interagency consultation related to regional transportation plan and transportation improvement program development, transportation conformity determinations and control strategy implementation plan development. Such consultation procedures shall be undertaken by transportation planning agencies [Kern Council of Governments (Kern COG)], California Department of Transportation (Caltrans), and the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) with the California Air Resources Board (CARB) and the Kern County Air Pollution Control District (KCAPCD) and United States Environmental

Protection Agency (U.S. EPA) before making conformity determinations, and by CARB and KCAPCD and U.S. EPA with Kern COG, Caltrans, FHWA, and FTA in developing control strategy implementation plans.

#### 93.105.2 Interagency Consultation Procedures: General Factors for RTP's and TIP's

93.105.2.1 Representatives of Kern COG, local and State air quality planning agencies, and State and local transportation agencies, shall undertake an interagency consultation process with each other and with local or regional offices of U.S. EPA, FHWA, and FTA in accordance with this section on the development of the implementation plan, the list of any TCM's in the control strategy implementation plan, the unified planning work program under 23 CFR Section 493.1120.314, the Regional Transportation Plan (RTP), the Transportation Improvement Program (TIP), any revisions to the preceding documents, and all conformity determinations required by this rule.

93.105.2.1.1 Regular consultation on major activities shall be conducted primarily at the technical level. At the beginning of each annual planning cycle, Kern COG shall designate technical representative(s) to be the primary contact for interagency consultation on transportation plan development and conformity findings. These representatives shall be responsible for conducting interagency consultation. In general, Kern COG shall have a designated representative to conduct conformity consultation with KCAPCD, Caltrans, CARB, FHWA, FTA, and U.S. EPA. Kern COG shall provide a forum for policy-level consultation with KCAPCD to ensure consistent air quality and transportation planning, including joint preparation of any TCM's to be used by the air district in meeting both federal and state clean air mandates. Representatives of the regional, state, and federal agencies listed in paragraph 93.105.1 of this rule shall be notified of meetings and may choose to attend.

93.105.2.1.2 It shall be the affirmative responsibility of Kern COG for preparation of a document or decision subject to the interagency consultation process, to initiate the consultation process by notifying other agencies, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare minutes of consultation meetings, maintain a written record of the consultation process, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision. Kern COG shall be responsible for the timely circulation of draft documents among the agencies for comment (and responding to any comments) before adoption or publication. Draft documents shall be circulated among agencies with a 30-day comment period. Copies of draft documents shall be made available for the public to view at Kern

COG offices. This availability shall be announced in local news media in advance of when the documents are available.

- 93.105.2.1.3 Each lead agency in the consultation process required under this section shall confer with other agencies identified under paragraph 93.105.1 of this section with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to them prior to any final decision on such documents.
  - 93.105.2.1.4 It shall be the responsibility of each agency specified in paragraph 93.105.1 of this section, when not acting as lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process in accordance with this paragraph when requested.
- 93.105.2.2 Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:
- 93.105.2.2.1 Kern COG shall:
    - 93.105.2.2.1.1 Develop RTP's and TIP's and make transportation conformity assessments (on a county level) on these plans, including transportation and emission modeling and TCM documentation. Findings on transportation conformity assessments will be made pursuant to interagency consultation procedures, and public participation consistent with 23 CFR 450.
    - 93.105.2.2.1.2 Designate a transportation conformity representative to coordinate with other agencies and attend meetings with other agencies. The transportation conformity representative shall solicit input from other agencies during the consultation process.
    - 93.105.2.2.1.3 Distribute meeting notices and agendas to each agency listed in paragraph 93.105.1 and be responsible for reviewing draft transportation conformity documents and assumptions. Distribute minutes of meetings to invitees.
    - 93.105.2.2.1.4 Solicit early and continuing input from the other agencies identified in paragraph 93.105.1 of this section in the development of RTP's,

TIP's, amendments to these documents, and other transportation-related projects.

93.105.2.2.1.5 Provide a period of at least 30 days for review and comment by other agencies prior to taking final action to adopt an RTP, TIP, amendments to these documents, and other projects that require conformity determinations.

93.105.2.2.1.6 Review and consider all comments received during interagency consultation process. Address significant comments in writing when requested by commenting agency.

93.105.2.2.1.7 Participate in conflict resolution processes as appropriate.

93.105.2.2.1.8 Identify regionally significant and exempt projects in accordance with paragraph 93.101 and 93.126, respectively, of the final transportation conformity rule and determine when these definitions should be enhanced to include previously excluded projects because of potential emission impacts.

93.105.2.2.1.9 Determine which regionally-significant non-federal projects will be subject to transportation conformity, revise of TIP's and RTP's when conformity is not shown, implement (when appropriate) and monitor progress of TCM's, ensure and coordinate public participation, and coordinate with other Transportation Planning Agencies (TPA's) and agencies as appropriate, including coordination of development and distribution of agendas for interagency consultation meetings.

93.105.2.2.1.10 Consult with KCAPCD and other relevant agencies as defined in paragraph 93.105.1 of this section when Kern COG is determining whether any new projects are regionally significant. This consultation provides an opportunity to discuss the classification of projects as regionally significant although they may not meet the definition provided in Section 93.1121.392 of 40 CFR Part 93.1121.

93.105.2.2.2 Caltrans shall:

93.105.2.2.2.1 Review and comment on RTP's, TIP's, and transportation conformity findings and procedures.

93.105.2.2.2.2 Designate a conformity representative to coordinate with other agencies and attend meetings with other agencies. The conformity representative shall solicit input from other agencies during the consultation process.

93.105.2.2.2.3 Submit TIP's for inclusion into the STIP, following appropriate consultation with and notification of other agencies as required by 23 CFR Section 493.1120.216 (a).

93.105.2.2.3 KCAPCD shall:

93.105.2.2.3.1 Review and provide comments as necessary on transportation conformity determinations and how emissions from a TIP or RTP compare to the motor vehicle emission budget in the control strategy implementation plan(s).

93.105.2.2.3.2 Provide input on issues such as changes to TPA-level emission budgets which do not change emission levels in the non-attainment area.

93.105.2.2.3.3 Designate a conformity representative to coordinate with other agencies and attend meetings with other agencies as necessary. The conformity representative shall solicit input from other agencies during the consultation process.

93.105.2.2.3.4 Provide opportunity for consultation when Kern COG is determining whether any new projects are regionally significant.

93.105.2.2.4 CARB shall:

93.105.2.2.4.1 Designate a conformity representative to coordinate with other agencies and attend meetings with other agencies at CARB's discretion.

93.105.2.2.4.2 Review and provide written comment on proposed TIP's, RTP's, RTP alternatives, control strategy implementation plan development and transportation conformity findings.

93.105.2.2.4.3 Provide the most recent U.S. EPA-approved emission factors (EMFAC) to Kern COG and Caltrans for use in emissions analyses, following appropriate consultation with appropriate agencies.

93.105.2.2.5 U.S. EPA shall:

93.105.2.2.5.1 Review and provide written comment on draft transportation conformity documents as well as RTP's and TIP's.

93.105.2.2.5.2 Provide guidance on the transportation conformity rule criteria and statute.

93.105.2.2.5.3 Review and approve updates of motor vehicle emission factors (EMFAC) for use in transportation conformity analyses.

93.105.2.2.5.4 Designate a conformity representative to coordinate with other agencies and attend meetings with other agencies at U.S. EPA's discretion. The conformity representative shall provide input from other agencies during the consultation process.

93.105.2.2.6 FHWA and FTA shall:

93.105.2.2.6.1 Comment on and provide joint transportation conformity determinations for RTP's and TIP's, and plan and program amendments.

93.105.2.2.6.2 Provide notification of final joint transportation conformity determinations to each agency listed in paragraph 93.105.1.

93.105.2.2.6.3 Take additional actions as necessary and appropriate to facilitate approval of conformity of RTP's and TIP's.

93.105.2.2.6.4 Provide guidance on transportation conformity and transportation planning.

93.105.2.2.6.5 Designate a conformity representative to coordinate with other agencies and attend meetings with other agencies at FHWA/FTA's discretion. The conformity representative shall solicit input from other agencies during the consultation process.

93.105.3 Interagency Consultation Procedures: General Factors for Development of Control Strategy Implementation Plans

93.105.3.1 KCAPCD, CARB and U.S. EPA shall consult regularly as appropriate with Kern COG prior to and throughout development of all control strategy implementation plan submittals which affect transportation conformity, including those which contain emissions budgets, control strategies, and/or proposed TCM's. KCAPCD, CARB and U.S. EPA shall transmit to Kern COG and the other agencies its draft and final air quality plans, TCM proposals, and available work programs for air quality planning activities and products, and shall solicit Kern COG's input on the region's transportation conformity determinations. Each agency shall participate early and continuously in control strategy implementation plan development to the extent its resources and priorities allow.

93.105.3.1.1 The organizational level of regular consultation shall be at the technical level. Technical consultation on control strategy implementation plan

revisions and on-road mobile emission budgets shall be undertaken by appropriate technical representative(s).

- 93.105.3.1.2 KCAPCD shall be responsible for the timely circulation of draft documents among the agencies for comment (and responding to comments) before adoption or publication. Draft documents shall be circulated among the agencies with a 30-day comment period. Copies of draft documents shall be made available for the public to view at the offices of KCAPCD.
- 93.105.3.1.3 Interagency consultation shall be accomplished through regular meetings of the technical committee(s) as appropriate and necessary.
- 93.105.3.2 All control strategy implementation plans and/or revisions, including those initiated by Kern COG and other local agencies, shall be submitted through KCAPCD.
- 93.105.3.3 CARB and U.S. EPA shall consult with KCAPCD on development of any control strategy implementation plans they promulgate or adopt.
- 93.105.3.4 Each agency's role and responsibilities are as follows:
  - 93.105.3.4.1 KCAPCD shall:
    - 93.105.3.4.1.1 Develop attainment demonstrations, control strategy implementation plans, and any regulatory TCM's within the statutory limits of KCAPCD.
    - 93.105.3.4.1.2 Solicit early and continuing input from the other agencies identified in paragraph 93.105.1 of this section in the development of control strategy implementation plan submittals.
    - 93.105.3.4.1.3 Distribute contents of draft control strategy implementation plans and copies of final control strategy implementation plan submittals and supporting materials to the agencies identified in paragraph 93.105.1 of this section.
    - 93.105.3.4.1.4 Adopt on-road mobile source emissions budgets developed by Kern COG in consultation with KCAPCD. Such budgets may be revised by KCAPCD after joint consultation between Kern COG, KCAPCD, and CARB prior to their adoption.
    - 93.105.3.4.1.5 Provide a period of at least thirty days for review and comment by other agencies prior to taking final action to adopt or amend a control

strategy implementation plan; review and consider the comments of other agencies; provide written responses to comments as appropriate.

93.105.3.4.1.6 Consult directly and regularly as appropriate and necessary with Kern COG at both policy and technical staff levels.

93.105.3.4.1.7 Consult with CARB, Caltrans, and U.S. EPA on use of emission factors.

93.105.3.4.1.8 Hold meetings as appropriate and necessary to provide status reports and solicit input from Kern COG on control strategy implementation plan development or revisions.

93.105.3.4.2 Kern COG shall:

93.105.3.4.2.1 Review and comment as appropriate on the contents of proposed control strategy implementation plan submittals for conformity determinations.

93.105.3.4.2.2 Develop and provide as appropriate and necessary system-based (facilities) and non-regulatory (programmatic) TCM's for inclusion in the SIP.

93.105.3.4.2.3 Develop proposed on-road mobile source emissions budgets in consultation with KCAPCD.

93.105.3.4.2.4 Program TCM's and work with appropriate jurisdictions to implement TCM's on schedule where responsible.

93.105.3.4.2.5 Recommend to KCAPCD when SIP revisions are necessary to replace TCM's.

93.105.3.4.2.6 Provide the information necessary to develop on-road motor vehicle activity level and associated emission levels for use in the control strategy implementation plan.

93.105.3.4.2.7 Hold regular meetings as appropriate and necessary with KCAPCD regarding development of the RTP, TIP, amendments to these documents, and other transportation projects.

93.105.3.4.3 Caltrans shall:

93.105.3.4.3.1 Assist with overall control strategy implementation plan development.



93.105.3.4.3.2 Consult with Kern COG and KCAPCD on development of any TCM's for inclusion in a control strategy implementation plan.

93.105.3.4.3.3 Consult with the other agencies on interregional projects.

93.105.3.4.3.4 Consult with the other agencies on transportation projects that are entirely under Caltrans discretionary control.

93.105.3.4.3.5 Provide transportation data to Kern COG for its consideration in development of emissions budgets.

93.105.3.4.4 U.S. EPA shall:

93.105.3.4.4.1 Participate in consultation meetings during development of control strategy implementation plan submittals.

93.105.3.4.4.2 Provide timely guidance to KCAPCD during development of control strategy implementation plan revisions.

93.105.3.4.4.3 Review all control strategy implementation plan revisions for completeness and approvability.

93.105.3.4.4.4 Review and approve updates of motor vehicle emission factors (EMFAC) for use in control strategy implementation plan emissions analysis.

93.105.3.4.4.5 Adopt on-road mobile source emission budgets for Federal Implementation Plans (FIP) for the Mojave Desert Air Basin portion of Kern County only after consultation with Kern COG and KCAPCD.

93.105.3.4.5 CARB shall:

93.105.3.4.5.1 Participate in consultation meetings during development of control strategy implementation plan revisions.

93.105.3.4.5.2 Provide timely guidance to KCAPCD during development of control strategy implementation plan submittals.

93.105.3.4.5.3 Review all draft and final control strategy implementation plan submittals for compliance with applicable requirements.

93.105.3.4.5.4 Submit control strategy implementation plan revisions to the U.S. EPA for approval.

93.105.3.4.5.5 Provide the most recent U.S. EPA-approved emission factors (EMFAC) to KCAPCD for use in control strategy implementation plan emissions analysis.

93.105.3.4.6 FHWA and FTA shall:

93.105.3.4.6.1 Review and comment as appropriate on the relevant contents of proposed control strategy implementation plan revisions.

93.105.3.4.6.2 Provide guidance on transportation conformity implications of proposed control strategy implementation plan revisions.

93.105.3.4.7 Other Recipients of Funds Under Title 23 U.S.C. or the Federal Transit Act shall:

93.105.3.4.7.1 Review and comment as appropriate on the relevant conformity determination issues.

93.105.4 Interagency Consultation Procedures: Specific Processes for Transportation Conformity

93.105.4.1 The consultation process shall include the specific issues listed in the following items 93.105.4.1.1 - 93.105.4.1.6. Recommendations and decisions on these issues shall be developed by the Kern COG technical representative(s) and presented at regularly scheduled meetings. In developing these recommendations, the designated Kern COG technical representative(s) shall solicit and consider input from KCAPCD, U.S. EPA, CARB, FHWA, FTA, Caltrans, and agencies receiving Federal transportation funds. Meeting agendas shall note when such issues are to be discussed.

93.105.4.1.1 Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

93.105.4.1.2 Determining which minor arterials and other transportation projects (if any) should be considered "regionally significant" for purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the RTP or TIP;

93.105.4.1.3 Evaluating whether projects otherwise exempted from meeting requirements of paragraphs 93.126 and 93.127 of the transportation

conformity rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

- 93.105.4.1.4 Making a determination, as required by Section 93.113 of the transportation conformity rule, whether past obstacles to implementation of TCM's which are behind the schedule established in the control strategy implementation plan have been identified and are being overcome, and whether TCM's are being given maximum priority for approval and/or funding. This process shall also consider whether delays in TCM implementation necessitate revisions to the State Implementation Plan to remove TCM's or substitute TCM's or other emission reduction measures;
  - 93.105.4.1.5 Identifying, as required by paragraph 93.116, projects located at sites in PM<sub>10</sub> non-attainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have exceedances verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis; and
  - 93.105.4.1.6 Notification of RTP or TIP revisions or amendments which merely add or delete exempt projects listed in paragraph 93.126 of the transportation conformity rule.
- 93.105.4.2 Kern COG shall consult, in accordance with paragraph 93.105.4.1, with KCAPCD, CARB, U.S. EPA, Caltrans, FHWA, FTA, and other local agencies which receive Federal transportation funds on the following transportation conformity issues:
- 93.105.4.2.1 Evaluating events which will trigger new transportation conformity determinations in addition to those triggering events established in paragraph 93.104; and
  - 93.105.4.2.2 Consulting on emissions analysis for transportation activities which cross the borders of TPA's or non-attainment areas or air basins.
- 93.105.4.3 Where the metropolitan planning area does not cover the entire non-attainment or maintenance area, Kern COG and Caltrans shall undertake cooperative planning and analysis for purposes of determining transportation conformity of all projects outside the metropolitan area and within the non-attainment or maintenance area. This shall be accomplished through the consultation procedures outlined in paragraph 93.105.2.1 of this section.
- 93.105.4.4 Kern COG shall ensure that member jurisdictions regularly disclose plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or

the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, and ensure any changes to those plans are regularly disclosed.

93.105.4.5 Kern COG and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act shall assign a location and design concept and scope of projects which are disclosed to Kern COG by its member jurisdictions as required by paragraph 93.105.4.4 of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of paragraph 93.122. These assignments will be based on the judgement of Kern COG and shall be discussed at the Kern COG technical level.

93.105.4.6 Kern COG shall consult with each agency listed in paragraph 93.105.1 on the design, schedule and funding of research and data collection efforts and regional transportation model development (e.g., household/travel transportation surveys) initially at the technical level through the appropriate technical committee.

93.105.4.7 Kern COG, KCAPCD and Caltrans shall distribute final documents (including control strategy implementation plan revisions) and supporting information to each agency within two weeks after approval or adoption.

#### 93.105.5 Resolving Conflicts Relating to Transportation Conformity Determinations

93.105.5.1 Conflicts relating to transportation conformity determinations among State agencies, or between State agencies and the TPA(s), or among TPA member jurisdictions, shall be identified by a TPA or agency in writing to the other TPA or agency and (as appropriate) KCAPCD, CARB, Caltrans, FHWA, FTA, and U.S. EPA. The TPA or member jurisdiction initially identifying the conflict has responsibility for determining which agencies should be notified. The TPA's or agency's written notice shall:

93.105.5.1.1 Explain the nature of the conflict.

93.105.5.1.2 Review options for resolving the conflict.

93.105.5.1.3 Describe the TPA's or agency's proposal to resolve the conflict.

93.105.5.1.4 Explain the consequences of not reaching resolution.

93.105.5.1.5 Request that comments on the matter be received within two weeks.

93.105.5.2 If the above action does not result in a resolution to the conflict, a meeting shall be held within four weeks after the initial letter documenting the conflict among

the involved agencies and TPA(s). Agencies not able to attend the meeting shall provide any input in writing prior to the meeting.

93.105.5.3 If staff of the involved agencies cannot resolve the conflict, the heads of the involved agencies, or their designees, shall meet to resolve differences in a manner acceptable to all involved parties.

93.105.5.4 Conflicts shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. CARB has 14 calendar days to appeal to the Governor after Caltrans or the TPA's or other involved agency have notified the Director of the CARB that either party plans to proceed with their conformity determination that is the source of the unresolved conflict. If the CARB appeals to the Governor, the final transportation conformity determination shall have the concurrence of the Governor. If the CARB does not appeal to the Governor within 14 days, the TPA or other project sponsor may proceed with the final transportation conformity determination. The Governor may delegate his or her role in the process, but not to the Director or staff of the KCAPCD, CARB, Caltrans, or a TPA.

#### 93.105.6 Public Consultation Procedures.

93.105.6.1 Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process and shall allow opportunity for public review and comment prior to taking formal action on a transportation conformity determination for all RTP's and TIP's, consistent with the requirements of 23 CFR part 493.1120. In addition, any such agency must specifically address in writing all public comments about known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval and that has not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide an opportunity for public involvement in transportation conformity determinations for projects where otherwise required by law. Local entities specified in Section 493.1120.316(b)(4) of FHWA/FTA's Statewide Planning: Metropolitan Planning shall be included in the public consultation process.

#### 93.105.7 Substitution of Transportation Control Measures

93.105.7.1 In the event that a transportation control measure (TCM) is not included in the RTP or TIP in the time frame contained for that measure in the applicable SIP, the parties listed in Section 93.105.1 shall assess whether such measure continues to be appropriate. Where Kern COG and KCAPCD concur that a transportation control measure identified in the SIP is no longer appropriate, the agencies may initiate the process described below to identify and adopt a substitute control measure.